

**Editor's note: Reconsideration denied by order dated Dec. 22, 1981**

UNITED STATES  
v.  
WILLIAM A. REAVELY ET AL.

IBLA 80-835

Decided March 25, 1981

Appeal from decision of Administrative Law Judge Michael L. Morehouse, declaring placer mining claims null and void. Contest No. A 7799-9.

Dismissed.

1. Appeals -- Rules of Practice: Appeals: Dismissal -- Rules of Practice: Appeals: Statement of Reasons

A statement of reasons in support of an appeal which does not point out affirmatively in what respect the decision appealed from is in error does not meet the requirements of the Department's rules of practice and the appeal may be dismissed.

APPEARANCES: William J. Marsh, Phoenix, Arizona, for the appellants; T. Adrian Pedron, Esq., Office of the General Counsel, U.S. Department of Agriculture, Albuquerque, New Mexico, for the Government. 1/

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1/ Judge Stuebing notes that although the claimants were represented at the hearing by a qualified attorney, on appeal the only appearance is by claimant William J. Marsh for himself and as "Agent" for the other claimants. This raises questions concerning his qualifications to practice before the Department. See 43 CFR 1.3. While some of the other claimants apparently are members of his family, it is not apparent that all are. Also, Marsh appears on behalf of the Marsh Trust without indicating that he is a fiduciary of that Trust. However, in view of our dismissal, it is unnecessary to resolve these questions.

## OPINION BY ACTING ADMINISTRATIVE JUDGE GRANT

Contestees William A. Reavely, Winifred Reavely, William J. Marsh, the Marsh Trust, Carol V. Marsh, Frederick Marsh, F. Hemple, Mary Lucius, and Imperial Joint Venture, Inc., have appealed from a decision of Administrative Law Judge Michael L. Morehouse, dated July 8, 1980, declaring the Flying Dutchman Nos. 1 through 4 placer mining claims null and void for lack of discovery of a valuable mineral deposit.

This case was initiated by the filing of a contest complaint by the Bureau of Land Management (BLM) on behalf of the Forest Service, U.S. Department of Agriculture, on August 9, 1978, charging:

- a. A valid discovery as required by the mining laws of the United States does not exist within the limits of any of the Flying Dutchman Nos. 1 through 4 placer mining claims.
- b. The land embraced within the limits of the claims is nonmineral in character within the meaning of the mining laws.

Hearings were held on June 5 and December 10, 1979. In his decision, the Administrative Law Judge held that the Government had established a prima facie case of lack of a discovery and appellants had not proven a discovery by a preponderance of the evidence.

The decision of the Administrative Law Judge was based on the testimony of the Government mineral examiners who examined the claims, took mineral samples, and had the samples assayed. The hearing commenced and the Government presented its case on June 5, 1979. Contestees were not prepared to present their case regarding validity of the claims and, pursuant to motion of counsel, the hearing was recessed until December 10, 1979, at which time contestees were still not prepared to present evidence of a discovery on the claims. Although contestees submitted two assay reports purporting to show gold values on the claims, the Administrative Law Judge noted that the party who took the samples on which the assays were based was not produced as a witness and therefore declined to give them probative weight. Further, he noted the reports were dated in 1975 and 1978 after the land had been segregated from location of mining claims.

Once the Government has met its the initial burden in a contest of the validity of a mining claim by presenting sufficient evidence to establish a prima facie case that no valuable mineral discovery has been made, the burden of proof is on the mining claimant to establish the validity of the claim. United States v. Williamson, 45 IBLA 264, 278-79, 87 I.D. 34, 42 (1980). Further, appellants must prove the existence of a discovery at the time of the segregation of the land from mineral entry, as required under the mining laws. See Cameron v.

United States, 252 U.S. 450 (1920); United States v. Williamson, *supra* at 277, 87 I.D. 42. The subject land was segregated from location of mining claims upon the filing of an application for a forest exchange covering the land on November 30, 1973. 43 CFR 2091.2-3 (1980); (Exh. G-2). The only evidence of mineral values on the subject land offered by appellants are the two assay reports referred to above, dated May 1978 and October 1975 (Exhs. R-3 and R-4), and the hearsay testimony of William J. Marsh regarding assay results obtained by Michael L. Davies, probably in August 1979 (Tr. 18-19 (Dec. 10, 1979)). This evidence is not probative of the existence of a discovery at the time of the segregation of the land. Thus, the decision of the Administrative Law Judge is well supported by the law and the record.

Appellants' statement of reasons for appeal contains only the conclusory statement that "there are valuable mineral deposits on the property \* \* \* and mining operations are now being conducted thereon." Counsel for contestant has moved to dismiss the appeal on the ground that appellants have not shown any error in the decision appealed from.

[1] It is well established that failure on appeal to point out affirmatively why the decision appealed from is in error may be treated in the same manner as an appeal in which no statement of reasons was filed and the appeal dismissed. United States v. Mangum, 35 IBLA 131 (1978); United States v. Coppridge, 17 IBLA 323 (1974). Appellants' statement of reasons makes no attempt to point out in what respect the decision appealed from is erroneous. Accordingly, the appeal must be dismissed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

C. Randall Grant, Jr.  
Acting Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

